

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**Advisory Opinion No. 155**

The question is whether a former employee who was a deputy in a City agency concerned with matters related to land use, may properly appear for her current employer [Company X] on behalf of a client on a matter with which she was concerned within one year of her City employment.

The Ethics Commission [Commission] understands the facts to be as follows:

1. The employee worked for one year, from (date) to (date), as a deputy in Department A, which has duties relating to the General Development Plan (GDP).
2. The employee was also a temporary employee from (date) to (date) with Department B which also has duties relating to the GDP.
3. During the employee's tenure in Department A, proposals to revise the general plan and to redraft the Honolulu Development Plan, including specific designated areas of interest to Company X's client, were submitted to the Planning Commission by the Chief Planning Officer.
4. After the adoption of the General Plan and the Honolulu Development Plan by the City Council [Council] and their approval by the Mayor, Company X's client, and the Chief Planning Officer with other staff persons held discussions concerning possible alternatives.
5. On (date), Company X's client filed suit against the City and County of Honolulu
  - a. challenging the legality of the Development Plan.
6. The employee is currently employed by Company X which has been engaged by its client to assist in the preparation of General Plan and Development Plan amendment applications and an Environmental Impact Statement in an area which they plan to
  - a. develop.
  - b. 7. Company X's client filed a General Plan amendment application and a Development Plan amendment application on (date).
  - c. 8. As required by ROH Section 6-1.3, the employee filed an affidavit. In addition to the facts listed above, the employee indicated on her affidavit that:

- d. She participated in decision making and reviewed drafts of the General Plan and the Development Plan referred to above in Nos. 3 and 4.
- e. She was periodically briefed as to the substance of the discussions between Company X's client and representatives of the Department of General Planning and Department A, where she was an employee.
- f. The discussions between Company X's client and the Chief Planning Officer ceased when the lawsuit was filed by Company X's client.
- g. The employee was not involved with any matters related to the preparation and processing of the General Plan and Development Plan proposing the establishment of the area of interest to Company X's client.
- h. In the employee's opinion, the one-year period during which she would be prohibited by ROH Section 6-1.3 from appearing before City agencies commenced on or before (date) and is, therefore, terminated.

ROH Section 6-1.3 provides:

Sec. 6-1.3 Restrictions Relative to Post Employment.

(a) Except as hereinafter provided, no former officer or employee of the City shall for compensation and within a period of one year after termination of service or employment:

(1) Appear before any agency in relation to any case, proceeding or application with respect to which such person was:

(A) directly concerned; or

(B) which was under his active consideration; or

(C) with respect to which knowledge or information was made available to him, unless he files a sworn affidavit with the agency he intends to do business with:

(i) that he was not directly concerned with such case, proceeding or application; or

(ii) such case, proceeding or application was not under his active consideration; or

(iii) no knowledge or information was made available to him

which was not readily available to the public during the period of said active service or employment with respect to such case, proceeding or application.

(2) Assist another person or business, including the one of which he is an officer or employee, in any official act or action by the City in which such former City officer or employee at any time participated during his City employment, unless he first files a sworn affidavit with the agency with which such person or business intends to do business that he did not participate in any official act or action by the City during his City employment.

(b) For purposes of this section the one year referred to above in connection with the phrase "termination of his city service of employment" shall begin from the time said former officer or employee last participated in a case, proceeding, or application in which such person (1) was directly concerned, or (2) which was under his active consideration, or (3) with respect to which knowledge or special information was made available to him.

(c) No officer or employee shall do business with any former officer or employee who falls within the scope of this section unless such former officer or employee first files a sworn affidavit as provided herein.

(d) Any former officer or employee who falls within the scope of this section and who makes a false statement in his sworn affidavit or files a false affidavit shall be deemed to have committed perjury and thereby subject to the provisions of Section 1060 of Act 9, SLH 1972 (Penal Code) and be punished as provided in said Act 9.

(e) This section shall not prohibit any agency from contracting with a former officer or employee to act on a matter on behalf of the City within the period of limitation stated herein and shall not prevent such officer or employee from appearing before any agency in relation to such employment.

As an employee of Department A, the employee was clearly involved in the matter of land use of interest to Company X's client. She was involved in decision making and in reviewing drafts of the Development Plan and the General Plan. She was briefed on discussions which were held between Company X's client and the Department of General Planning personnel, and she had continued access to City information after Company X's client filed its lawsuit. After Company X's client filed its suit, discussions may have stopped between Company X's client and City personnel, but the issue continued to be a matter of concern within the Department of General Planning and other City departments, including Department A.

The employee's affidavit was filed to comply with ROH Section 6-1.3 to try to show that she was not concerned with the matter for at least one year prior to the filing of her affidavit so that she could deal with City agencies. The Commission does not agree with the conclusions drawn in her affidavit.

The employee stated in her affidavit that she was not directly concerned with the preparation and processing of Development Plan and General Plan amendment applications. These applications are the subject matter of her current representation of Company X's client. While she was not involved with the actual application, she was concerned with the general issue of the land area of interest to Company X's client.

In addition, the Commission does not agree that the one-year time period referred to in ROH Section 6-1.3 would run from (date). The filing of the lawsuit on that date did not terminate the issue of concern to the Department of General Planning and to Department A.

Therefore, the Commission finds that the one-year period would not begin to run until after the employee terminated City employment.

The employee's affidavit made no reference to the nature of her employment with Department B from (date) to (date). The Commission understands that she was assigned to work pertaining to General Plan and Development Plan amendments. If she plans to appear before City agencies prior to (date), it is suggested that she file a new affidavit which addresses whether she was concerned with the subject matter and whether information was made available to her that was not readily available to the public during her employment at Department A.

Date: January 28, 1986

GILBERT A. GIMA  
Chair, Ethics Commission